

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.198 of 2006

DATE OF DECISION: February 13,2007

Kharaiti Lal

....Appellant

VERSUS

Amar Singh and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL

PRESENT: Shri S.D.Sharma, Senior Advocate with
Shri Neeraj Sharma, Advocate for the appellant.
Shri Ashok Jindal, Advocate for respondents
No.3 to 5.

Viney Mittal,J.

All the legal representatives of the original plaintiff
Kharaiti Lal are the appellants before this Court.

A suit for declaration, permanent injunction and
possession filed by the plaintiff has been dismissed by the two Courts
below, whereas, the counter claim preferred by defendants No.2 to 6
seeking possession of the suit property has been decreed by both the
courts below.

Kharaiti Lal filed the suit in question on February 24, 1995 claiming that he was real brother of defendant No.1 Amar Singh and both the brothers alongwith their third brother Harisharan Dass had migrated from Pakistan in the year 1947 and started living in an old house at Bathinda. It was alleged that a portion of the said house, which was in possession of Kharaiti Lal fell down. He took possession

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of some vacant land measuring 221 square yards situated at Amrik Singh Road, Bathinda and raised a boundary wall and construction. The aforesaid land belonged to custodian department. According to the plaintiff, he installed a diesel engine and Atta Chakki on that land and also constructed residential accommodation on one side. It was claimed that he was in continuous possession of the said property without any interference or interruption from any side.

According to the plaintiff, in the year 1957 Custodian Department allotted the said land in the name of Amar Singh, defendant No.1 but actual possession was never delivered to the said Amar Singh but remained with Kharaiti Lal. The plaintiff also pleaded that on April 13, 1986, Amar Singh, defendant No.1 had relinquished and surrendered his proprietary and possessory rights in the suit land in favour of Kharaiti Lal and admitted his possession and even received Rs.20,000/- and later on, on September 29, 1986 executed an acknowledgement deed relinquishing all the rights in the said property in favour of Kharaiti Lal. In these circumstances, the plaintiff claimed that Amar Singh had no right or title or concern with

the suit property. On that basis, two sale deeds executed on January 17, 1995 and registered on January 18, 1995 by Amar Singh in favour of defendants No.2 to 6 were also challenged being without any authority and not binding on the rights of the plaintiff.

Additionally, the plaintiff claimed that he had become the owner of the suit property by way of adverse possession.

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The plaintiff also claimed that on December 26, 1995, defendants No.2 to 6 had taken forcible possession of one room. The plaintiff made a prayer for possession of the aforesaid road.

The suit was contested by defendants No.2 to 6. Various technical pleas were raised by them. On merits of the controversy, relationship of Kharaiti Lal, Amar Singh and Harisharan Dass was admitted. However, the aforesaid defendants maintained that Custodian Department had allotted the property in question in the year 1955 to Amar Singh, defendant No.1 and it was the aforesaid defendant who had made certain additions in the property and was in exclusive possession of the same since the date of allotment. It was denied that Kharaiti Lal was ever in possession of the suit property or that he had ever raised any construction in the said property.

The aforesaid defendants also denied that Amar Singh at any point of time had executed any relinquishment deed in favour of the plaintiff or had ever received Rs.20,000/-. The aforesaid defendants claimed that being exclusive owner of the suit property,

Amar Singh had validly executed two sale deeds on January 17, 1995 registered on January 18, 1995.

Defendants No.2 to 6 also filed a counter claim seeking possession of the suit property by pleading that Amar Singh was in exclusive possession of the suit property and was running his business there but taking advantage of ill health of Amar Singh, the plaintiff had taken possession of the suit property in the month of January 1995

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and was in unauthorised and illegal possession of the same except one room which was in possession of defendants No.2 to 6.

The learned trial Court appraised the entire evidence led by the parties and came to the conclusion that the suit property had been allotted in favour of Amar Singh, defendant No.1 by the Custodian Department and it was he alone who had paid the entire amount of instalments. It was also held by the trial Court that Amar Singh, being the owner of the suit property had validly executed two sale deeds in question in favour of defendant Nos. 2 to 6. The trial Court also rejected the memorandum/relinquishment deed dated September 29,1986 by holding that the same did not inspire any confidence with regard to its genuineness. It was also noticed by the trial Court that the suit in question had originally been filed by Kharaiti Lal in the year 1995 when no mention of the aforesaid relinquishment deed had ever been made in the plaint but after the death of Kharaiti Lal, his legal representatives had sought an

amendment of the original plaint in the year 1997 and it was only at that point of time through an amendment, the factum of the alleged relinquishment deed was pleaded. The trial Court also relied upon the statement of Handwriting Expert Dr. Atul Singla, DW7, who had opined that the alleged signatures of Amar Singh on the aforesaid relinquishment deed dated September 29, 1986 did not tally with the standard signatures of Amar Singh. Thus, the said relinquishment deed was ruled out of consideration.

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The trial Court also held that two sale deeds were legal and valid having been executed by Amar Singh with a due authority and after having received consideration, in favour of defendants No.2 to 6.

The trial Court also rejected the plea raised by the plaintiff Kharaiti Lal claiming adverse possession by holding that even as per the case set up by the legal representatives of the plaintiff, the memorandum of settlement was allegedly executed on September 29, 1986 and the suit in question had been filed in the year 1995 and, therefore, the plaintiff could not be taken to have matured his title by way of adverse possession.

On the basis of the aforesaid findings, the trial Court dismissed the suit filed by the plaintiff and decreed the counter claim of defendants No.2 to 6.

The legal representatives of the plaintiff filed an appeal.

The learned First Appellate also re-appraised the evidence and affirmed all the findings recorded by the trial Court. Thus, the appeal filed by the legal representatives of the plaintiff was also dismissed.

I have heard Shri S.D.Sharma, the learned senior counsel appearing for the appellants and Shri Ashok Jindal, the learned counsel appearing for the respondents No.3 to 5 and with their assistance have also gone through the record of the case.

Shri S.D.Sharma, the learned senior counsel appearing for the appellants has contended that the First Appellate Court has not

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given any findings with regard to the relinquishment deed, inasmuch as, the learned senior counsel maintains that the aforesaid relinquishment deed duly proves that after having received an amount of Rs.20,000/-, Amar Singh had relinquished all his rights in the suit property in favour of plaintiff Kharaiti Lal. The learned senior counsel has also argued that in any case the plaintiff had proved that he had become the owner of the suit land by way of adverse possession.

I have duly considered the aforesaid contentions of the learned senior counsel for the appellants but find unable to agree with the same.

It is not in dispute that originally the suit in question was filed by the plaintiff in the month of February 1995. In the original suit, no mention of any relinquishment deed/memorandum dated September 29, 1986 was made by the plaintiff. It was only after the

death of Kharaiti Lal that his legal representatives filed an application for amendment of the plaint and in the amended plaint filed on March 18,1997 the aforesaid relinquishment deed was pleaded for the first time by taking up a plea that a sum of Rs.20,000/- had been paid by Kharaiti Lal to Amar Singh. The aforesaid fact itself casts a serious doubt on the genuineness/authenticity of the aforesaid relinquishment deed.

Further, Dr.Atul Singla, Handwriting Expert had appeared as DW7 and had given his opinion that signatures of Amar Singh on relinquishment deed do not tally with the standard

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signatures. In these circumstances, the execution of any such relinquishment deed by Amar Singh is not even proved..

It is conceded by the learned senior counsel for the appellants that relinquishment deed has never been taken into evidence and exhibited. The said document is merely marked P.1. It has rightly been held by both the Courts below that since the said relinquishment deed pertained to immovable property worth more than Rs.100/-, therefore, the same was required to be compulsorily registered and being an unregistered document, the said writing has been excluded from consideration.

Even otherwise, as noticed above, the very execution of the said relinquishment deed has not been proved.

With regard to the other claim made by the plaintiff that he had become owner of the suit land by way of adverse possession, it has rightly been held by the two Courts below that the suit in question

having been filed in the year 1995 and even as per the case set up by the plaintiff, the relinquishment deed having been executed in the year 1996, the statutory period had not expired and the plaintiff could not be taken to have become the owner of the suit land by way of adverse possession.

It may also be noticed at this stage, that as per the record, Amar Singh, defendant No.1 was allotted the suit property by the Custodian Department and as per document Ex.DW6/1 he had paid all the instalments. In these circumstances, being an allottee, Amar

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Singh had validly executed the two sale deeds in favour of defendants No.2 to 6 who had become the owner thereof.

No other point has been urged.

Nothing has been shown that the findings of fact recorded by the two Courts below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law, arises in the present appeal.

Dismissed.

February 13, 2007
Mittal)
KD

(Viney
Judge